

Item SPR06-27 Response Form

Title: Criminal Cases: Criminal Protective Order Forms (amend form CR-160 and adopt forms CR-161 and 162)

- ☐ **Agree** with proposed changes
- ☐ **Agree** with proposed changes **if modified**
- ☐ **Do not agree** with proposed changes

Comments: _____

Name: _____ **Title:** _____

Organization: _____

☐ **Commenting on behalf of an organization**

Address: _____

City, State, Zip: _____

Please **write** or **fax** or **respond using the Internet** to:

Address: Ms. Romunda Price,
Judicial Council, 455 Golden Gate Avenue,
San Francisco, CA 94102
Fax: (415) 865-7664 **Attention:** Romunda Price
Internet: www.courtinfo.ca.gov/invitationstocomment

DEADLINE FOR COMMENT: 5:00 p.m., Friday, June 23, 2006

Your comments may be written on this *Response Form* or directly on the proposal or as a letter. If you are not commenting directly on this sheet please remember to attach it to your comments for identification purposes.

*Circulation for comment does not imply endorsement by the Judicial Council,
the Rules and Projects Committee, or the Policy Coordination and Liaison Committee.
All comments will become part of the public record of the council's action.*

Invitations to Comment SPR06-27

Title	Criminal Cases: Criminal Protective Order Forms (amend form CR-160 and adopt forms CR-161 and 162)
Summary	<p>These three forms would be used for protective orders in criminal cases. The current criminal protective order (form CR-160, <i>Protective Order in Criminal Proceeding</i>) would be amended to be used only in domestic violence cases. Two new protective orders would be added: form CR-161, <i>Criminal Protective Order—Other Than Domestic Violence</i>; and form CR-162, <i>Order to Surrender Firearms in Criminal Case</i>. All forms would include recent legislative mandates and some of the suggestions from the recent work of the Attorney General’s task force on domestic violence cases.</p>
Source	Criminal Law Advisory Committee
Staff	Joshua Weinstein, 415-865-7688, joshua.weinstein@jud.ca.gov
Discussion	<p>The three forms in this proposal are related to criminal protective orders (CPO), in both domestic and nondomestic violence cases. Specifically, the proposal would (1) amend the current protective order (form CR-160) to limit its application to domestic violence cases, (2) adopt a new criminal protective order (form CR-161) for cases other than domestic violence, and (3) adopt a new form (form CR-162) that allows courts to order the surrender of firearms in criminal cases, without ordering the other typical criminal protective order provisions.</p> <p>As noted above, the current form CR-160, <i>Protective Order in Criminal Proceeding</i>, would be amended to limit it to domestic violence cases. This is based on a proposal in the report from the Attorney General’s recent task force on domestic violence cases. In its report, the task force expressed concern that the domestic violence box on the current form CR-160 is often not checked, resulting in the order’s not being entered to relevant domestic violence police registries and databases. In addition to making substantive changes to the form, the proposed amendment would improve the form stylistically. The substantive changes include:</p> <ul style="list-style-type: none"> • Modify the no-contact portion of the order (item 5(a)) to follow the language in other protective orders. • Change the firearm surrender provision (item 5(b)) from check boxes for 48-hour and 24-hour surrender periods to require that the firearms be surrendered within 24 hours of service of the order. This is based on amendments pending before the Legislature (Assem. Bill 2129[Spitzer]). If the bill does not

become law, this provision would be restored to the current check boxes.

- Add a new provision (item 5(d)) to conform with new Penal Code section 136.3, which provides that the restrained person is “prohibited from taking any action to obtain the address or location of a protected party or a protected party’s family members, caretakers, or guardian unless good cause is found not to make that order.” (Pen. Code, § 136.3(a).) There is also a check box to indicate that the court has found good cause not to make a restraining order.
- Change the warnings regarding which conflicting protective order takes precedence, to comply with recent statutory amendments. The Legislature provided that the emergency protective order (EPO) has precedence over the CPO and other protective orders if (1) the EPO is to protect a person already subject to the CPO, (2) the person to be restrained by the EPO is also restrained by the CPO, and (3) the EPO is more restrictive than the CPO. (Pen. Code, § 136.2(b).) To that end, two changes are proposed: (1) the front of the form refers the reader to item 1 on page 2 if there are conflicting orders, and (2) item 1 on page 2 is modified to reflect the new provisions in Penal Code section 136.2(b).

The proposed form CR-161, *Criminal Protective Order—Other Than Domestic Violence*, is essentially identical to form CR-160. The differences are:

- The warnings on page two have been changed to remove warnings and notices that are specific to domestic violence cases.

Proposed form CR-162, *Order to Surrender Firearms in Criminal Case*, is designed to comply with a new provision in Penal Code section 136.2. Under that new provision a court in a domestic violence case, on its own motion, “shall consider” issuing an order that provides that “the defendant shall not own, possess, purchase, receive, or attempt to purchase or receive, a firearm.” (Pen. Code, §136.2(g)(2)(A).) The court is to enter such an order “upon a good cause belief that harm to, or intimidation or dissuasion of, a victim or witness has occurred or is reasonably likely to occur.” (*Ibid.*)

The committee considered using the current CPO to comply with this new law. However, in the end the committee decided not to, because the CPO would have to be changed substantively to comply with these

new provisions. If there is no separate form for the order to surrender firearms, then every other provision on the criminal protective orders would need to be check boxes (so that the judge could order only firearms surrender). Given that the clerk would need to check the common check boxes regularly, the committee concluded that it would be more efficient to have a separate form for the relatively rare instances of when the court ordering simply firearms surrendering.

Attachments

NAME OF COURT AND DISTRICT, BRANCH, OR DIVISION, IF ANY: 	FOR COURT USE ONLY <h2 style="margin: 0;">Draft 11</h2> <h2 style="margin: 0;">4.14.06 sl</h2>
PEOPLE OF THE STATE OF CALIFORNIA vs. DEFENDANT:	
<p style="text-align: center;">CRIMINAL PROTECTIVE ORDER — DOMESTIC VIOLENCE (CLETS) (Penal Code, §§ 136.2 and 1203.097(a)(2))</p> <div style="display: flex; justify-content: space-between;"> <div style="width: 45%;"> <input type="checkbox"/> ORDER PENDING TRIAL <input type="checkbox"/> ORDER POST TRIAL PROBATION CONDITION </div> <div style="width: 45%;"> <input type="checkbox"/> MODIFICATION For domestic violence cases as defined in Penal Code § 13700 </div> </div>	CASE NUMBER:

In Case of Conflicting Court Orders, See Item 1 on Page 2.

PERSON TO BE RESTRAINED <i>(Complete name):</i> _____ Sex: <input type="checkbox"/> M <input type="checkbox"/> F Ht.: _____ Wt.: _____ Hair Color: _____ Eye Color: _____ Race: _____ Age: _____ Date of Birth: _____ <input type="checkbox"/> The defendant is a peace officer with _____ Department.
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1. This proceeding was heard on *(date)*: _____ at *(time)*: _____ in Dept.: _____ Room: _____
by judicial officer *(name)*: _____
2. This order expires on *(specify date)*: _____
If no date is listed, this order expires three years from the date of issuance.
3. ☐ Defendant was personally present at the court hearing, and no additional proof of service of this order is required.
4. COMPLETE NAME OF EACH PROTECTED PERSON: _____

GOOD CAUSE APPEARING, THE COURT ORDERS

5. The above-named defendant
 - a. must not harass, strike, threaten, assault (sexually or otherwise), follow, stalk, molest, destroy or damage personal or real property, disturb the peace, keep under surveillance, or block movements of the protected persons named above.
 - b. **must surrender to local law enforcement or sell to a licensed gun dealer any firearm owned or subject to his or her immediate possession or control within 24 hours after service of this order and shall file a receipt with the court showing compliance with this order within 72 hours of receiving this order.**
 - c. must not attempt to or actually prevent or dissuade any victim or witness from attending a hearing or testifying or making a report to any law enforcement agency or person.
 - d. must take no action to obtain the address or location of protected persons or their family members, caretakers, or guardian unless good cause exists otherwise. ☐ The court finds good cause not to make the order in this paragraph.
 - e. ☐ must have no personal, electronic, telephonic, or written contact with the protected persons named above.
 - f. ☐ must have no contact with the protected persons named above through a third party, except an attorney of record.
 - g. ☐ must not come within _____ yards of the protected persons named above.
 - h. ☐ may have peaceful contact with the protected persons named above only for the safe exchange of children for court-ordered visitation as stated in the attached Family, Juvenile, or Probate court order in Case No. _____, issued on *(date)*: _____, as an exception to the "no contact" or "stay-away" provision in paragraph (e), (f), or (g) of this order.
 - i. ☐ may have peaceful contact with the protected persons named above only for the safe exchange of children for visitation as stated in a Family, Juvenile, or Probate court order issued after the date this order is signed, as an exception to the "no contact" or "stay away" provisions in paragraph (e), (f), or (g) of this order.
6. ☐ The protected persons may record any prohibited communications made by the restrained person.
7. Other orders including stay-away orders from specific locations:

Date:

JUDICIAL OFFICER

Department/Division:

WARNINGS AND NOTICES

1. This order takes precedence over any other prior or subsequent conflicting protective order, visitation order, or any other order of the court, except for a more restrictive *Emergency Protective Order* (form EPO-001) restraining and protecting the same parties as in this order unless box 5(h) or box 5(i) on page 1 has been checked.
2. **VIOLATION OF THE ORDER IS SUBJECT TO CRIMINAL PROSECUTION.** Violation of this protective order may be punished as a misdemeanor, a felony, or a contempt of court. Taking or concealing a child in violation of this order may be a felony and punishable by confinement in state prison, a fine, or both. Traveling across state or tribal boundaries with the intent to violate the order may be punishable as a federal offense under the Violence Against Women Act, 18 U.S.C. § 2261 (a)(1) (1994).
3. **NOTICE REGARDING FIREARMS.** Any person subject to a protective order is prohibited from owning, possessing, purchasing or attempting to purchase, receiving or attempting to receive, or otherwise obtaining a firearm. Such conduct is subject to a \$1,000 fine and imprisonment. The person subject to these orders shall relinquish any firearms and not own or possess any firearms during the period of the protective order. Under federal law, the issuance of a restraining order after hearing will generally prohibit the restrained person from owning, accepting, transporting, or possessing firearms or ammunition. A violation of this prohibition is a separate federal crime. (Penal Code, § 136.2 (d).)
4. **ENFORCING THIS RESTRAINING ORDER IN CALIFORNIA**
 - This order **shall** be enforced in California by any law enforcement agency that has received the order or is shown a copy of the order, or has verified its existence on the California Law Enforcement Telecommunications System. (CLETS).
 - Law enforcement **shall** determine whether the restrained person had notice of the order. If notice cannot be verified, law enforcement **shall** advise the restrained person of the terms of the order and, if the restrained person fails to comply, shall enforce it. (Family Code, § 6383.)
5. **ENFORCING RESTRAINING ORDERS ACROSS STATE LINES.** Protective orders from other states, the District of Columbia, the Commonwealth of Puerto Rico, tribal lands, and U.S. territories shall be deemed valid if the issuing court had jurisdiction over the parties and matter under the laws of that place or tribunal, and shall be enforced as if they were California orders. Such orders shall be presumed valid when the order appears authentic on its face. (Family Code, § 6380.5(a).)
6. **CERTIFICATE OF COMPLIANCE WITH VIOLENCE AGAINST WOMEN ACT (VAWA).** This protective order meets all Full Faith and Credit requirements of the Violence Against Women Act, 18 U.S.C. § 2265 (1994). This court has jurisdiction over the parties and the subject matter, and the restrained person has been afforded notice and a timely opportunity to be heard as provided by the laws of this jurisdiction. This order is valid and entitled to enforcement in each jurisdiction throughout the 50 United States, the District of Columbia, all tribal lands, and all U.S. territories, and shall be enforced as if it were an order of that jurisdiction.
7. **EFFECTIVE DATE AND EXPIRATION DATE OF ORDERS**
 - These orders are effective as of the date they were signed by a judicial officer.
 - These orders expire as explained in item 2 on the reverse.
 - If no expiration date is listed for the protective orders, they expire three years from the date issued.
8. **CHILD CUSTODY AND VISITATION**
 - Child custody and visitation orders may be established or modified in Family, Juvenile, or Probate court.
 - Unless 5(i) is checked, contact between the restrained and protected persons permitted by a Family, Juvenile, or Probate court order for child custody or visitation must not conflict with the provisions of this order.
 - If box 5(h) or (i) is checked, the restrained and protected persons should always carry a certified copy of the most recent child custody or visitation order issued by the Family, Juvenile, or Probate court.

NAME OF COURT AND DISTRICT, BRANCH, OR DIVISION, IF ANY: 	<p style="text-align: center;"><i>FOR COURT USE ONLY</i></p> <p style="text-align: center; font-size: 24pt;">Draft 9 4.11.06 sl</p>
PEOPLE OF THE STATE OF CALIFORNIA vs. DEFENDANT:	
CRIMINAL PROTECTIVE ORDER — OTHER THAN DOMESTIC VIOLENCE (CLETS) (Penal Code, § 136.2) <input type="checkbox"/> ORDER PENDING TRIAL <input type="checkbox"/> MODIFICATION <input type="checkbox"/> ORDER POST-TRIAL PROBATION CONDITION	CASE NUMBER:

PERSON TO BE RESTRAINED (<i>Complete name</i>): _____	
Sex: <input type="checkbox"/> M <input type="checkbox"/> F Ht.: _____ Wt.: _____ Hair Color: _____ Eye Color: _____ Race: _____ Age: _____ Date of Birth: _____	
<input type="checkbox"/> The defendant is a peace officer with _____ Department _____	

1. This proceeding was heard on (*date*): _____ at (*time*): _____ in Dept.: _____ Room: _____
by judicial officer (*name*): _____
2. This order expires on (*specify date*): _____
If no date is listed, this order expires three years from the date of issuance.
3. ☐ Defendant was personally present at the court hearing, and no additional proof of service of the restraining order is required.
4. COMPLETE NAME OF EACH PROTECTED PERSON: _____

GOOD CAUSE APPEARING, THE COURT ORDERS

5. The above-named defendant
 - a. must not harass, strike, threaten, assault (sexually or otherwise), follow, stalk, molest, destroy or damage personal or real property, disturb the peace, keep under surveillance, or block movements of the protected persons named above.
 - b. **must surrender to local law enforcement or sell to a licensed gun dealer any firearm owned or subject to his or her immediate possession or control within 24 hours after service of this order and must file a receipt with the court showing compliance with this order within 72 hours of receiving this order.**
 - c. must not attempt to or actually prevent or dissuade any victim or witness from attending a hearing or testifying or making a report to any law enforcement agency or person.
 - d. must take no action to obtain the address or location of protected persons or their family members, caretakers, or guardian.
☐ The court finds good cause not to make the order in this paragraph.
 - e. ☐ must have no personal, electronic, telephonic, or written contact with the protected persons named above.
 - f. ☐ must have no contact with the protected persons named above through a third party, except an attorney of record.
 - g. ☐ must not come within _____ yards of the protected persons named above.
 - h. ☐ may have peaceful contact with the protected persons named above only for the safe exchange of children for court-ordered visitation as stated in the attached Family, Juvenile, or Probate court order in Case No. _____ issued on (*date*): _____, as an exception to the "no contact" or "stay-away" provision in paragraph (e), (f), or (g) of this order.
 - i. ☐ may have peaceful contact with the protected persons named above only for the safe exchange of children for visitation as stated in a Family, Juvenile, or Probate court order issued after the date this order is signed, as an exception to the "no contact" or "stay away" provisions in paragraph (e), (f), or (g) of this order.
6. ☐ The protected persons may record any prohibited communications made by the restrained person.
7. Other orders including stay-away orders from specific locations:

Date:

JUDICIAL OFFICER

Department/Division:

WARNINGS AND NOTICES

1. **VIOLATION OF THE ORDER IS SUBJECT TO CRIMINAL PROSECUTION.** Violation of this protective order may be punished as a felony, a misdemeanor, or contempt of court.
2. **NOTICE REGARDING FIREARMS.** Any person subject to a restraining order is prohibited from owning, possessing, purchasing or attempting to purchase, receiving or attempting to receive, or otherwise obtaining a firearm. Such conduct is subject to a \$1,000 fine and imprisonment. The person subject to these orders shall relinquish any firearms and not own or possess any firearms during the period of the restraining order. Under federal law, the issuance of a restraining order after hearing will generally prohibit the restrained person from owning, accepting, transporting, or possessing firearms or ammunition. A violation of this prohibition is a separate federal crime. (Penal Code, § 136.2 (d).)
3. **ENFORCING THIS RESTRAINING ORDER IN CALIFORNIA**
 - This order **shall** be enforced in California by any law enforcement agency that has received the order or is shown a copy of the order, or has verified its existence on the California Law Enforcement Telecommunications System (CLETS).
 - Law enforcement **shall** determine whether the restrained person had notice of the order. If notice cannot be verified, law enforcement **shall** advise the restrained person of the terms of the order and, if the restrained person fails to comply, shall enforce it. (Code of Civil Procedure, § 527.6.)
4. **EFFECTIVE DATE AND EXPIRATION DATE OF ORDERS**
 - These orders are effective as of the date they were signed by a judicial officer.
 - These orders expire as explained in item 2 on the reverse.
5. **CHILD CUSTODY AND VISITATION**
 - Child custody and visitation orders may be established or modified in Family, Juvenile, or Probate court.
 - Unless 5(i) is checked, contact between the restrained and protected persons permitted by a Family, Juvenile, or Probate court order for child custody or visitation must not conflict with the provisions of this order.
 - If box 5(h) or 5(i) is checked, the restrained and protected persons should always carry a certified copy of the most recent child custody or visitation order issued by the Family, Juvenile, or Probate court.

NAME OF COURT AND DISTRICT, BRANCH, OR DIVISION, IF ANY: 	<p style="text-align: center;"><i>FOR COURT USE ONLY</i></p> <p style="text-align: center; font-size: 24pt;">Draft 8 4.14.06 sl</p>
PEOPLE OF THE STATE OF CALIFORNIA vs. DEFENDANT:	
ORDER TO SURRENDER FIREARMS IN CRIMINAL CASE (CLETS) (Penal Code, § 136.2(a)(7)(B))	CASE NUMBER:

PERSON TO SURRENDER FIREARMS (<i>Complete name</i>):	
Sex: <input type="checkbox"/> M <input type="checkbox"/> F Ht.: _____ Wt.: _____ Hair Color: _____ Eye Color: _____ Race: _____ Age: _____ Date of Birth: _____	
<input type="checkbox"/> The defendant is a peace officer with _____ Department. _____	

- This proceeding was heard
on (*date*): _____ at (*time*): _____ in Dept.: _____ Room: _____
by judicial officer (*name*): _____
- This order expires on (*specify date*): _____
If no date is listed, this order expires three years from the date of issuance.
- ☐ Defendant was personally present at the court hearing, and no additional proof of service of the restraining order is required.

GOOD CAUSE APPEARING, THE COURT ORDERS

- The above-named defendant must surrender to local law enforcement or sell to a licensed gun dealer any firearms owned or subject to his or her immediate possession or control within 24 hours after issuance of this order. You are prohibited from owning, possessing, purchasing or attempting to purchase, receiving or attempting to receive, or otherwise obtaining a firearm. Such conduct is subject to a \$1,000 fine and imprisonment.

Date: _____

JUDICIAL OFFICER Department/Division:

NOTICE REGARDING EFFECTIVE DATE AND EXPIRATION DATE OF ORDER

- The order is effective as of the date it was signed by a judicial officer.
- The order expires as explained in item 2.
- If no expiration date is listed for the order, it expires three years from the date issued.

NOTICE TO CLERKS

- This is a separate order from the protective orders in criminal cases.
- Do not use in conjunction with form CR-160 or form CR-161.